

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>Criminal Action No. 1:13-CR-00346-SS</b>
	)	
<b>MICHAEL BAKER</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**STIPULATION REGARDING TESTIMONY OF JAMES ETRI**

The United States and Defendant Michael Baker hereby stipulate and agree to the following:

1. The United States will remove James Etri from the witness list and will not call him as a witness in the upcoming criminal trial against Mr. Baker;
2. Defendant Michael Baker will not call James Etri as a witness at the upcoming criminal trial;
3. The United States does not challenge the authenticity of the following two Securities and Exchange Commission ("SEC") documents that were not admitted during Mr. Baker's first trial: (1) a July 1, 2010 Memorandum from the SEC to Main Justice re: ArthroCare ; and (2) a May 31, 2011 Memorandum from Jim Etri to Ben Singer re: ArthroCare;
4. Defendant Baker agrees to withdraw the subpoena *duces tecum* served on Mr. Etri in connection with the pending criminal case; and
5. While the parties do not agree on the admissibility of the SEC's Motion to Amend the Civil Complaint or the proposed Amended Complaint (Case No. 12-cv-285-SS, D.E. 64), this agreement does not preclude the United States from offering those documents as evidence, subject to any objections Defendant Baker may have.

The parties respectfully submit that the agreement between the parties reflected in this stipulation, including the agreement by Defendant Baker to withdraw the subpoena served on Mr. Etri, resolves the pending dispute over documents within the SEC's possession, and thereby renders this Court's Order at D.E. 498 moot.<sup>1</sup>

Respectfully submitted,

SANDRA MOSER  
Acting Chief  
Fraud Section, Criminal Division  
U.S. Department of Justice

By: /s/ Caitlin R. Cottingham  
Benjamin D. Singer  
Chief, Securities and Financial Fraud Unit  
Fraud Section, Criminal Division  
U.S. Department of Justice  
1400 New York Avenue, NW  
Washington, DC 20530  
(202) 262-9907  
Benjamin.Singer@usdoj.gov

Henry P. Van Dyck  
Assistant Chief  
Fraud Section, Criminal Division  
U.S. Department of Justice  
1400 New York Avenue, NW  
Washington, DC 20530  
(202) 514-1721  
Henry.VanDyck@usdoj.gov

Caitlin R. Cottingham  
Trial Attorney  
Fraud Section, Criminal Division  
U.S. Department of Justice  
1400 New York Avenue, NW  
Washington, DC 20530  
Tel: (202) 531-8732  
Caitlin.Cottingham@usdoj.gov

By: /s/ Dennis P. Riordan  
Dennis P. Riordan  
dennis@riordan-horgan.com  
Riordan & Horgan  
523 Octavia Street  
San Francisco, CA 94102  
Telephone: (415) 431-3472

Christie Williams  
cwilliams@millsandwilliams.com  
Mills & Williams  
106 East 6th Street, Suite 900  
Austin, TX 78701  
Telephone (512) 322-5322

Martha Boersch  
MBoersch@boerschshapiro.com  
Boersch Shapiro LLP  
1611 Telegraph Avenue, Suite 806  
Oakland, CA 94612  
Telephone: (415) 217-3700

John Cline  
cline@johndclinelaw.com  
Law Office of John D. Cline  
235 Montgomery Street, Suite 1070  
San Francisco, CA 94104  
Telephone: (415) 662-2260

Tyler G. Newby  
tnewby@fenwick.com  
FENWICK & WEST LLP  
Silicon Valley Center

---

<sup>1</sup> As a result of this stipulation the parties further agree that the Court's Order in the Civil Action, No. 12-cv-285, D.E. 84, is also moot.

Dated: August 4, 2017

801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Attorneys for Defendant Michael Baker

Dated: August 4, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on August 4, 2017, I electronically transmitted the foregoing document to the Clerk of the Court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the Court which caused a Notice of Electronic Filing to be transmitted to all ECF registrants.

/s/ Caitlin R. Cottingham

Caitlin R. Cottingham

Trial Attorney

Fraud Section, Criminal Division